



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. John L. Schomburger
Assistant District Attorney
Collin County Courthouse
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR95-1489

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34595.

The Collin County District Attorney received an open records request for a recording of a 9-1-1 telephone call pertaining to an alleged incident of sexual assault. You first contend that the tape recording implicates the privacy interests of the victim of the alleged assault and thus must be withheld from the public pursuant to section 552.101 of the Government Code. After reviewing the copy of the tape recording submitted to this office, we conclude that it does not contain "highly intimate or embarrassing" information so as to invoke the protection of common-law privacy. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Nor does the tape recording identify the victim of the alleged assault.¹ Accordingly, we conclude that none of the tape recording is protected by common-law privacy.

¹We disagree with your contention that the victim's voice, which is mostly unintelligible on the tape recording, would tend to reveal the victim's identity. However, assuming *arguendo* that "knowledgeable friends and acquaintances" could identify the victim from her voice on the tape, we doubt that that fact alone would serve to protect this tape recording from public disclosure. *See Star-Telegram, Inc. v. Doe*, No. 4578, 1995 WL 341575, *4 (Tex. June 8, 1995).

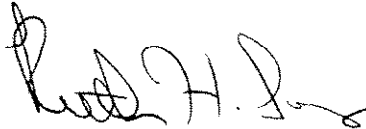
You contend that the tape recorded 9-1-1 call may be withheld from the public pursuant to the "informer's privilege" as incorporated into section 552.101 of the Government Code. The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law to officials responsible for enforcing those laws. *See generally* Open Records Decision No. 515 (1988). Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individuals who are the subject of the complaint. *See* Open Records Decision No. 208 (1978). Because it is clear from information that you have submitted to this office in connection with a separate but related request for an open records decision (ID# 34626) that the alleged assailants are fully aware of the identity of their accuser, the informer's privilege is inapplicable here.

You also contend that the tape recording comes under the protection of section 552.108 of the Government Code, the "law-enforcement" exception. When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). Although evidence collected in connection with a criminal investigation is presumptively protected by section 552.108 during the pendency of the investigation, *see* Attorney General Opinion MW-446 (1982), once a criminal investigation is closed, section 552.108 generally does not apply absent a demonstration that the release of the information would "unduly interfere" with law-enforcement efforts. *See* Open Records Decision No. 378 (1983). This appears to be a closed investigation. You have not demonstrated, nor is it apparent to this office, how the release of the tape recording would interfere with any law-enforcement interest. Accordingly, we conclude that you have not met your burden under section 552.108.

Finally, you contend that the tape recording is excepted from public disclosure because it was submitted to the Collin County Grand Jury during its deliberations concerning the alleged assault. Open Records Decision No. 513 (1988) concluded, however, that information is not excepted from public disclosure, either as a record of the judiciary, *see* Gov't Code § 552.003(b), or as information deemed confidential under article 20.02 of the Code of Criminal Procedure, which makes confidential information revealing the substance of grand jury deliberations, merely because the information was presented to the grand jury. Information gathered by a district attorney independently of any request or direction of the grand jury, even where that information was subsequently submitted to the grand jury, may not be withheld from the public under the judicial exception found at section 552.003(b) or under the confidentiality provision found at article 20.02 of the Code of Criminal Procedure. Open Records Decision No. 513 (1988). In this instance you have not argued or otherwise demonstrated that your office has either collected or maintained the tape recording at the request or direction of the grand jury. We therefore conclude that there is no basis for withholding the tape recording on these grounds. The tape recording must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/rho

Ref.: ID# 34595

Enclosure: Submitted tape recording

cc: Ms. Anita Vanetti
WFAA-TV 8
Communications Center
606 Young Street
Dallas, Texas 75202-4810
(w/o enclosure)